UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT BLUEFIELD

STAY THE COURSE WEST VIRGINIA, a
West Virginia unaffiliated independent
expenditure political action committee;
DAVID BAILEY, in his capacity as Chairman
and Treasurer of Stay the Course West Virginia;
PINEVILLE LUMBER, INC., a West Virginia
Corporation; and **THOMAS STEPHEN BAILEY,**

Plaintiffs,

v.

Civil Action No. 1:12-1658

NATALIE E. TENNANT, in her official capacity
as West Virginia Secretary of State and member
of the West Virginia State Election Commission;
and **SCOTT ASH,** in his official capacity as
Prosecuting Attorney for Mercer County, West
Virginia, as a representative of the class of
all West Virginia Prosecuting Attorneys,

Defendants.

COMPLAINT

COME NOW Plaintiffs, by counsel, and for their Complaint state the following:

I. PRELIMINARY STATEMENT

1. This is a civil action for preliminary injunctive relief, class certification, declaratory judgment, and permanent injunctive relief pertaining to certain provisions of the West Virginia Election Code, companion provisions of the West Virginia Code of State

Rules, and certain related policies of the West Virginia Secretary of State.

2. Plaintiffs contend that West Virginia Code §§ 3-8-8(a), 3-8-8(b), 3-8-12(f), and 3-8-12(g) (2011), West Virginia Code of State Rules §§ 146-1-3.1, 146-1-3.2, 146-1-6.2, and 146-3-5.2 (2008), and certain policies of the West Virginia Secretary of State pertaining to the challenged statutes and legislative rules violate their First Amendment right to free speech.

3. Plaintiffs seek a preliminary injunction prohibiting enforcement of the challenged statutes, rules, and policies; class certification of all West Virginia prosecuting attorneys to be represented by Defendant Scott Ash; expedited declaratory relief regarding the constitutionality of the challenged statutes, rules, and policies; a permanent injunction prohibiting enforcement of the challenged statutes, rules, and policies; attorneys fees and costs; and such other relief as may be just and equitable.

II. JURISDICTION AND VENUE

4. This action arises under Title 42, § 1983 of the United States Code, and the First Amendment to the Constitution of the United States of America (Freedom of Speech), as made applicable to the states by the Fourteenth Amendment.

5. This Court has subject matter jurisdiction pursuant to Title 28, § 1331 of the United States Code (Federal Question) and Title 28, § 1343 of the United States Code (Civil Rights).

6. Venue in this Court is proper under Title 28, § 1391 of the United States Code because a Defendant resides in this district and all Defendants are residents of the State of West Virginia.

III. PARTIES

7. Stay the Course West Virginia is a political action committee that has duly registered with the West Virginia Secretary of State as an unaffiliated independent expenditure political action committee and has timely filed with the Internal Revenue Service as a political organization as defined by the Internal Revenue Service Code, 26 U.S.C.S. § 527(e)(1). (EXHIBIT A attached hereto – Stay the Course West Virginia PAC Organization & IRS filings.) Stay the Course West Virginia is not affiliated in any way with any political party, corporation, membership organization, political candidate, or committee, or any agent or representative of any political candidate. (*Id.;* EXHIBIT B attached hereto – David Bailey affidavit.)

8. Plaintiff David Bailey is a registered voter and resident of Kanawha County, West Virginia. (EXHIBIT B.) He is Chairman and Treasurer of Stay the Course West Virginia. (EXHIBITS A & B.)

9. Plaintiff Pineville Lumber, Inc. ("Pineville Lumber") is a West Virginia corporation having its offices and principal place of business in Varney, West Virginia. (EXHIBIT C attached hereto – Everett Hannah affidavit.)

10. Plaintiff Thomas Stephen Bailey is a registered voter and resident of Kanawha County, West Virginia. (EXHIBIT D attached hereto – Thomas Stephen Bailey affidavit.)

11. Defendant Natalie E. Tennant is the duly elected Secretary of State for the State of West Virginia. She is the "chief election officer of the State" and a member of the West

Virginia State Election Commission.[1] W. Va. Code § 3-1A-6(a) (2011). She has statutory authority to, *inter alia*, "investigate the administration of election laws, frauds, and irregularities in any registration or election; [and] report violations of election laws to the appropriate prosecuting officials. . . ." *Id.* at § 3-1A-6(c).

12. Defendant Scott Ash is the Prosecuting Attorney for Mercer County, West Virginia. He is a resident of Mercer County, West Virginia. He is sued as the representative of a class consisting of the 55 prosecuting attorneys in West Virginia. The prosecuting attorneys are responsible for enforcing the criminal penalty provisions of the West Virginia Election Code. *See id.* at § 7-4-1.

IV. STATEMENT OF FACTS

13. David Bailey established Stay the Course West Virginia for the sole purpose of soliciting contributions in order to make independent expenditures[2] prior to and with respect to the West Virginia general election to be held on November 6, 2012. These independent expenditures will (i) support the re-election of one or more incumbent state government officeholders who have contributed to improving the West Virginia business climate and strengthening the West Virginia economy, and (ii) seek the defeat of the opponent(s) of such incumbent(s). (EXHIBIT B.) Decisions regarding which incumbent(s)

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[1] This Court has held that the West Virginia State Election Commission "is neither an indispensable nor a necessary party" to a lawsuit challenging the constitutionality of provisions of the West Virginia Election Code, and that the presence of the Secretary of State as a party to such a lawsuit is adequate to protect any interests the State Election Commission may have in the litigation. *Center for Individual Freedom, Inc. v. Ireland*, 2008 WL 1837324, No. 1:08-00190, at *1 n. 1 (S.D.W.Va. April 22, 2008), *motion granted by* 2008 WL 4452659 (S.D.W.Va. Sep 29, 2008).

[2] The West Virginia Election Code defines "independent expenditures" as expenditures "[e]xpressly advocating the election or defeat of a clearly identified candidate[,] . . . [which are] not made in concert or cooperation with or at the request or suggestion of such candidate, his or her agents, the candidate's authorized political committee or a political party committee or its agents." W. Va. Code § 3-8-1a(15) (2011).

Stay the Course West Virginia will support will be made by Mr. Bailey in consultation with other members of Stay the Course West Virginia. (*Id.*)

14. All of the contributions to and expenditures by Stay the Course West Virginia will be fully disclosed to the public in accordance with the West Virginia Election Code, W. Va. Code §§ 3-1-1 through 3-12-17, and the applicable legislative rules, Title 146 of the West Virginia Code of State Rules; and the Committee will file all reporting forms required by the Internal Revenue Service. (*See* EXHIBIT B.)

15. The West Virginia Election Code prohibits a person from contributing more than $1,000 "in connection with or on behalf of any person engaged in furthering, advancing, supporting or aiding the nomination or election of any candidate for any . . . [statewide or other public office]." W. Va. Code § 3-8-12(f) (2011).

16. The West Virginia Election Code prohibits a political action committee, such as Stay the Course West Virginia, from accepting contributions of more than $1,000 from any one person prior to the primary election and of more than $1,000 from any one person after the primary election and before the general election. *Id.* at § 3-8-12(g); *see also* W. Va. C.S.R. § 146-3-5.2 (2008) (stating the same limitations on contributions).

17. Any person violating any provision of West Virginia Code § 3-8-12 is guilty of a misdemeanor and is subject to a fine of not more than $1,000 and/or confinement in jail for not more than one year. W. Va. Code § 3-8-12(n) (2011).

18. Prior to 2010, West Virginia Code § 3-8-8(a) provided that no corporation could contribute anything of value to the corporation "to any candidate, financial agent or ***political committee or other person*** for the payment of any primary or other election

expenses whatever"; and further, this section prohibited any person from soliciting or receiving corporate contributions. W. Va. Code § 3-8-8(a) (2006) (emphasis added). Prior to 2010, West Virginia Code § 3-8-8(c) (2006) provided that any person or corporation violating § 3-8-8 was guilty of a misdemeanor and subject to a fine of up to $10,000.

19. Section 3-8-8 was re-written by the West Virginia Legislature in 2010. The new § 3-8-8 does ***not*** expressly prohibit corporate contributions to a "political committee" or "other persons" for any election expense. Its prohibition of corporate contributions is limited to contributions to "any candidate or candidate's campaign." W. Va. Code § 3-8-8(a) (2011). Section 3-8-8(b) prohibits the solicitation or receipt of corporate contributions to any candidate or candidate's committee. The provision making it a misdemeanor to violate § 3-8-8 and providing for a fine of up to $10,000 was preserved. *See id.* at § 3-8-8(d) (2011); *see also* W. Va. C.S.R. § 146-1-7 (2008).

20. The current West Virginia legislative rules applicable to corporate political activity were adopted in 2008, before West Virginia Code § 3-8-8 was re-written in 2010. The current legislative rules prohibit corporations from making "a ***contribution or expenditure*** . . . ***whatsoever*** in connection with" any primary or general election campaign, with the exception of certain specific instances, none of which is applicable here.[3] W. Va. C.S.R. § 146-1-3.1 (2008). These rules provide further that no political committee or other person shall knowingly accept corporate contributions. *Id.* at §§ 146-1-3.2 and 146-1-6.2.

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[3] "Contributions" and "expenditures" are defined by the West Virginia legislative rules as "any direct or indirect payment . . . of money, or anything of value to any candidate, political party or committee, organization, or any other person in connection with any election to any . . . [public office]." W. Va. C.S.R. § 146-1-2.2 (2008).

These rules are essentially the same as the superseded West Virginia Code § 3-8-8(a) (2006). These rules are inconsistent with the current §§ 3-8-8(a) and (b), which prohibit only corporate contributions to "any candidate or candidate's campaign."

21. It is the current policy of the West Virginia Secretary of State that no corporate political activity is permitted except for the establishment of a separate segregated fund (*i.e.*, a political action committee). (*See* EXHIBIT E attached hereto – *Running for Office in West Virginia* (2012) at 31, 45-46 (This publication is available online at http://www.sos.wv.gov/elections/administrators/Documents/Guides/Running%20for%20Office%20in%20West%20Virginia%202012.pdf); *see also* EXHIBIT F attached hereto – Pages from the WV Secretary of State's Internet website at 2 ("Corporations may not make direct political contributions . . . to candidates or other political action committees, and may not make direct expenditures to support or oppose candidates.").)

22. West Virginia Code § 3-8-2 (2011) implies that corporations are permitted to make independent expenditures, as opposed to political contributions.[4] Specifically, § 3-8-2(b)(1)(B) explicitly includes corporations in its definition of the "persons"[5] who must report making independent expenditures in excess of $1,000 during a calendar year.

23. The Secretary of State's policy prohibiting independent expenditures by corporations is inconsistent with West Virginia Code § 3-8-2 and violates a recent decision of

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[4] *See* supra at 4, n. 2, for the definition of "independent expenditures." The definition of "contribution" includes "a transfer of money or other tangible thing of value to a person, made for the purpose of influencing the nomination, election or defeat of a candidate." W. Va. Code § 3-8-1a(6) (2011).

[5] A "person" is defined by the West Virginia Election Code as "an individual, ***corporation***, partnership, committee, association and any other organization or group of individuals." W. Va. Code § 3-8-1a(18) (2011) (emphasis added).

the Supreme Court of the United States, which declares that corporations cannot be prohibited from making unlimited independent expenditures that expressly advocate the election or defeat of a political candidate. *Citizens United v. FEC*, __ U.S. __, 130 S. Ct. 876, 913 (2010).

24. The current policy of the Secretary of State prohibiting corporations from contributing to any political action committee, even if the committee is an independent expenditure committee, violates the judicial extension of *Citizens United* to independent expenditure political action committees.

25. The leading case regarding contributions to independent expenditure political action committees is *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc), *cert denied, Keating v. FEC*, __ U.S. __, 131 S. Ct. 553 (2010). Under *SpeechNow*, anyone permitted to make unlimited independent expenditures to support the election or defeat of a political candidate, which includes corporations as provided in *Citizens United*, cannot be prohibited from making unlimited contributions to an independent expenditure political action committee, such as Stay the Course West Virginia. *See SpeechNow*, 599 F.3d at 696 (*citing Citizens United*); *see also North Carolina Right to Life, Incorporated v. Leake*, 525 F.3d 274, 291-93 (4th Cir. 2008) (striking down as unconstitutional under the First Amendment a state statute limiting the amount a person can contribute to an independent expenditure political action committee).

26. Pineville Lumber is ready, willing, able, and wishes to make an independent expenditure under the West Virginia Election Code by contributing $5,000 to Stay the Course West Virginia (sometimes hereinafter "the Committee"), but believes that it is

prohibited from doing so by law and by the Secretary of State's current policy, and that it would be subject to criminal prosecution should it make this contribution. (*See* EXHIBIT C.)

27. David Bailey, as Chairman and Treasurer of the Committee, desires to solicit and receive contributions to the Committee in amounts greater than $1,000 from natural persons and from corporations. Mr. Bailey wishes to pool these contributions in order to make independent expenditures expressly advocating the election or defeat of certain candidates during the weeks and months prior to the general election on November 6, 2012. (*See* EXHIBIT B.)

28. David Bailey believes that he is prohibited by law and by the Secretary of State's current policy from soliciting and accepting contributions to the Committee in any amount from corporations and in amounts greater than $1,000 from natural persons, and that he would be subject to criminal prosecution should he solicit or accept such contributions. (*Id.*)

29. Thomas Stephen Bailey is ready, willing, able, and wishes to contribute $1,200 to the Committee, but believes that he is prohibited by law from doing so and would be subject to criminal prosecution should he make this contribution. (EXHIBIT D.)

V. STANDING & RIPENESS

30. Plaintiffs have standing to bring this civil action because the issues raised regarding the First Amendment are significant and Plaintiffs face imminent and impending injury in the very near future (*i.e.*, prosecution for a misdemeanor, burdensome litigation, and imposition of fines and/or imprisonment) if they exercise their right to free speech by

making or accepting contributions to the Committee in violation of the limitations imposed by the challenged laws, regulations, and policies. *See West Virginians for Life v. Smith,* 919 F. Supp. 954, 956-57 (S.D.W.Va. 1996) (*citing Buckley v. Valeo,* 424 U.S. 1, 12 (1976)).

31. The controversy presented by this civil action is ripe for judicial review because of its significant constitutional issues and because Plaintiffs face the unconscionable dilemma of complying with the challenged provisions, in derogation of their right to free speech, or exercising their constitutional right to free speech in violation of the challenged provisions and policies and thereby facing criminal punishment. *See id.* at 957 (*citing Doe v. Bolton,* 410 U.S. 179 (1973) and *Epperson v. Arkansas,* 393 U.S. 97 (1968)).

VI. CLASS ACTION ALLEGATIONS

32. A class of all West Virginia prosecuting attorneys should be certified and a class action maintained in this matter, pursuant to Rule 23 of the Federal Rules of Civil Procedure, because the class of West Virginia prosecuting attorneys is sufficiently numerous that joinder of all members of the class would be impracticable; the questions of law and fact presented in this civil action are common as to all members of the proposed class; the defenses of the purported representative are typical and common of the defenses of the class; the purported representative will fairly and adequately protect the interests of the class; the questions of law common to the members of the class predominate over any questions affecting only individual members; and a class action is superior to any other available method for fair and efficient adjudication of this controversy.

33. Defendant Scott Ash is a qualified and appropriate representative of a class of the 55 prosecuting attorneys of the State of West Virginia as his office has experience as a

class representative in legal actions challenging provisions of the West Virginia Election Code. *See Center for Individual Freedom, Inc. v. Tennant,* 2011 WL 2912735, Nos. 1:08-cv-190 & 1:08-cv-1133, n.8 (S.D.W.Va. July 18, 2011); *Appalachian Power Co. v. Sadler,* 314 F. Supp. 639, 640 (S.D.W.Va. 2004); *West Virginians for Life v. Smith*, 960 F. Supp. 1036, 1042 (S.D.W.Va. 1996).

VII. VIOLATIONS OF THE FIRST AMENDMENT

34. The First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, directs, *inter alia*, that the government "shall make no law . . . abridging the freedom of speech. . . ."

35. The current policy of the Secretary of State of prohibiting corporations from making independent expenditures is inconsistent with West Virginia Code § 3-8-2 (2011) and is unconstitutional on its face under *Citizens United,* 130 S. Ct. at 913 (holding that limitations on independent expenditures by corporations violate the First Amendment right to free speech).

36. The plain language of West Virginia Code §§ 3-8-8(a) and (b) do not prohibit corporations from making contributions to political action committees that are not affiliated with any candidate or candidate's campaign.

37. It is facially unconstitutional to interpret West Virginia Code §§ 3-8-8(a) and (b) (2011) as prohibiting corporations from making contributions to independent expenditure political action committees. *See SpeechNow*, 599 F.3d at 696; *see also North Carolina Right to Life, Inc. v. Leake,* 525 F.3d at 291-93; *Wisconsin Right to Life Political Action Comm. v. Barland,* 664 F.3d 139 (7th Cir. 2011) (citing *SpeechNow.org* and striking

down as unconstitutional under the First Amendment a state statute limiting the annual amount a person can contribute to an independent expenditure political action committee); *Long Beach Area Chamber of Commerce v. City of Long Beach*, 603 F.3d 684 (9th Cir. 2010) (striking down as unconstitutional under the First Amendment a local ordinance prohibiting a political action committee from making independent expenditures if it receives contributions above a certain amount), *cert denied*, 131 S. Ct. 392 (2010).

38. West Virginia Code of State Rules § 146-1-3.1 is unconstitutional on its face to the extent it prohibits corporations from making contributions to an independent expenditure political action committee.

39. West Virginia Code of State Rules §§ 146-1-3.2 and 146-1-6.2 are unconstitutional on their face to the extent they prohibit an independent expenditure political action committee, or its officers, agents or representatives acting on its behalf, from accepting or receiving corporate contributions in any amount.

40. West Virginia Code §§ 3-8-12(f) and (g), and West Virginia Code of State Rules § 146-3-5.2 are unconstitutional on their face to the extent they place a limitation of $1,000 per election on how much a person (including a corporation) can contribute to an independent expenditure political action committee.

41. Stay the Course West Virginia is denied its First Amendment right to free speech by any statute, legislative rule, or policy of the Secretary of State that prohibits its Chairman, Treasurer, agent, or authorized representative from soliciting, accepting, or receiving contributions in any amount from corporations; and soliciting, accepting, or

receiving contributions in excess of $1,000 per election from anyone, including corporations.

42. David Bailey is denied his First Amendment right to free speech, as the Chairman and Treasurer of the Committee, by any statute, legislative rule, or policy of the Secretary of State that prohibits him from soliciting, receiving, or accepting any corporate contribution to Stay the Course West Virginia, or a contribution to the Committee from a natural person or corporation in excess of $1,000 per election.

43. Pineville Lumber is denied its First Amendment right to free speech by any statute, legislative rule, or policy of the Secretary of State prohibiting it from making a contribution in any amount to an independent expenditure political action committee, such as Stay the Course West Virginia.

44. Thomas Stephen Bailey is denied his First Amendment right to free speech by any statute, legislative rule, or policy of the Secretary of State prohibiting him from contributing more than $1,000 per election to an independent political action committee, such as Stay the Course West Virginia.

VIII. FIRST CAUSE OF ACTION – PRELIMINARY INJUNCTION

45. Plaintiffs re-allege the preceding paragraphs.

46. There are four criteria that must be addressed before a preliminary injunction can be issued: (1) the likelihood of irreparable harm to the plaintiff if a preliminary injunction is not granted; (2) the likelihood of irreparable harm to the defendant if a preliminary injunction is granted; (3) the likelihood plaintiff will prevail on the merits; and (4) the public interest.

A. The likelihood of irreparable harm to Plaintiffs if a preliminary injunction is not granted.

47. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Center for Individual Freedom, Inc. v. Ireland*, 613 F. Supp. 2d 777, 784 (S.D.W.Va. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)), *injunction terminated by Center for Individual Freedom, Inc. v. Tennant*, 2011 WL 2912735 (S.D.W.Va. July 18, 2011); *see also West Virginians for Life*, 919 F. Supp at 958.

48. Plaintiffs' free speech rights are being violated and Plaintiffs are being irreparably harmed if the situations set forth in the preceding paragraphs are permitted to continue and Plaintiffs are denied the opportunity to solicit, make, receive, and accept contributions in any amount from natural individuals and corporations in order for Stay the Course West Virginia to plan and prepare for its independent expenditures in the weeks and months before the general election on November 6, 2012.

49. Plaintiffs will suffer irreparable harm of a significant magnitude if the challenged statutes, legislative rules, and policies of the Secretary of State are allowed to remain in effect and Plaintiffs are denied the opportunity to solicit, make, receive, and accept contributions in any amount from natural individuals and corporations in order for the Committee to plan and prepare for its independent expenditures in the weeks and months before the general election on November 6, 2012.

50. Time is of the essence regarding this Court's resolution of the issues presented by this civil action because there is a very limited time frame for the Committee to raise money for its 2012 independent expenditures; the general election is less than six months from the date of this Complaint.

B. The likelihood of irreparable harm to Defendants if a temporary injunction is granted.

51. Defendants will suffer no irreparable harm should a temporary injunction be issued "as it is simply their responsibility to enforce the law, whatever it says." *See Center for Individual Freedom, Inc.*, 613 F. Supp. 2d at 807.

52. The balance of irreparable harm between Plaintiffs and Defendants tips decidedly in favor of Plaintiffs and, therefore, the issuance of a temporary injunction prohibiting Defendants from enforcing the challenged provisions and policies is favored.

C. The likelihood Plaintiffs will prevail on the merits.

53. This case presents serious questions regarding the effect of portions of the West Virginia Election Code, corresponding legislative rules, and policies of the Secretary of State on First Amendment free speech rights regarding political activity prior to the 2012 general election.

54. The case law cited above from the Supreme Court of the United States and the United States Courts of Appeals for the District of Columbia and the Fourth, Seventh, and Ninth Circuits constitutes unchallenged judicial precedent that directly supports Plaintiffs' positions in this lawsuit and, accordingly, it is very likely that Plaintiffs will prevail on the

merits in this case; and, therefore, the issuance of a temporary injunction prohibiting Defendants from enforcing the challenged provisions and policies is favored.

D. The public interest.

55. "Protection of freedom of speech in a democratic society is of critical public interest." *Center for Individual Freedom, Inc. v. Ireland,* 2008 WL 1837324, No. 1:08-00190, at *6 (S.D.W.Va. April 22, 2008) (citing *West Virginians for Life*, 919 F. Supp at 960), *motion granted by* 2008 WL 4452659 (S.D.W.Va. Sept. 29, 2008); *see also Center for Individual Freedom, Inc.*, 613 F. Supp at 807-8.

56. Protecting First Amendment rights "is very much in the public's interest. . . ." *Center for Individual Freedom, Inc. v. Ireland*, 613 F. Supp. 2d at 808.

57. The challenged provisions of the West Virginia Election Code, related legislative rules, and policies of the Secretary of State are unconstitutional on their face and chill Plaintiffs' right to speak freely on political matters. Accordingly, the issuance of a temporary injunction prohibiting the enforcement of the challenged provisions and policies will serve the public interest.

IX. SECOND CAUSE OF ACTION – DECLARATORY JUDGMENT & PERMANENT INJUNCTION

58. Plaintiffs re-allege the preceding paragraphs.

59. Plaintiffs are unwilling to expose themselves to criminal charges and associated burdensome litigation that will likely result from their performance of the activities prohibited by the challenged provisions and policies. Therefore, the chilling

effect on Plaintiffs' First Amendment right to free speech is an actual and existing irreparable constitutional injury.

60. Plaintiffs' injuries will continue into the future as to them and others similarly situated unless the challenged provisions and policies are declared unconstitutional and Defendants permanently enjoined from enforcing them.

61. The challenged provisions and policies were enacted, are maintained, and Defendants' enforcement responsibilities are founded in and exercised under color of law and, therefore, violate Title 42, § 1983 of the United States Code, which entitles Plaintiffs to all appropriate relief.

62. The existing and continuing infringement of Plaintiffs' free speech rights becomes greater and more acute as the general election draws nearer; consequently, prompt judicial relief is essential.

63. Monetary relief is not realistically available and could not adequately redress Plaintiffs' continuing injuries.

64. Permanent injunctive relief is necessary to preclude the future chilling effect of the challenged provisions and policies as to Plaintiffs and others similarly situated during the 2012 and subsequent elections.

X. RELIEF

WHEREFORE, Plaintiffs respectfully request this Court to:

65. Declare as unconstitutional West Virginia Code §§ 3-8-8(a), 3-8-8(b), 3-8-12(f), and 3-8-12(g), West Virginia Code of State Rules §§ 146-1-3.1, 146-1-3.2, 146-1-6.2, and 146-3-5.2, and the above-described policies of the West Virginia Secretary

of State to the extent these provisions and policies (i) prohibit corporations from making contributions to independent expenditure political action committees, (ii) prohibit anyone from soliciting, making, receiving, or accepting corporate contributions to independent expenditure political action committees, and (iii) place any limitation on the amount of contributions that can be made by corporations and natural persons to independent expenditure political action committees.

66. Prohibit Defendants and their agents and successors, by way of preliminary and permanent injunctions, from criminally prosecuting Plaintiffs for soliciting, receiving, accepting, or making contributions in any amount to Stay the Course West Virginia.

67. Grant them attorneys fees and costs in accordance with Title 42, §§ 1983 and 1988 of the United States Code.

68. Grant such other relief as may be just and equitable.

Date: May 23, 2012

STAY THE COURSE WEST VIRGINIA, DAVID BAILEY, PINEVILLE LUMBER, INC., and **THOMAS STEPHEN BAILEY,**

By Counsel

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